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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,720	01/17/2002	Michael Robert Dehart	DEH01-02	4224

7590 09/02/2004

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EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT PAPER NUMBER

3653

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/053,720	Applicant(s) DEHART ET AL.	
	Examiner Joseph C Rodriguez	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 21-25 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12,13 and 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-11,14,15,24 and 25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

The use of newly cited prior art references in the instant prior art rejections render this paper a second non-final office action. The claims are now treated as follows-

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 8-11, 14-15 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Here, Applicant defines "a rotatable screen wheel" in claim 1, but refers to this limitation with different claim language throughout the dependent claims (Cf. "rotatable wheel" in claim 1, ln. 10 and 11 with "the rotatable screen wheel" in claim 7). Applicant is reminded to refer to a previously defined limitation with the same claim terminology.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 15, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoyt (US 474,662).

Hoyt teaches an apparatus (Fig. 1-6) comprising a hopper (connected to I2) with water means (inherent), a separator with an inlet for receiving material (end of I2) and a passageway (area in A), a first outlet (connected to B), a second outlet (bottom of C), and a rotatable screen (H) with drive means (G), wherein the material is screened during axial flow and the rotating screen centrifugally directs material towards the first outlet through the screens substantially horizontal screening surface (p. 1, ln. 60 et seq.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 14, 15, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyt in view of King (US 3,596,759) and legal precedent.

Hoyt as set forth above teaches all that is claimed except for expressly teaching a baffle disposed in the hopper and a water pump. Further, under an alternative interpretation, the hopper with water means and an inlet for receiving material from the hopper may not be regarded as present in Hoyt as Hoyt teaches these features, as well as a baffle (J or K), as separate. Legal precedent, however, already teaches that

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making known features either separable or integral is non-obvious. See MPEP 2144.04 (V). Further, King teaches that it is well known to combine a water means within a hopper when separating gravel (Fig. 1, near 14) and that the use of water pumps to transfer water is also well known in the gravel separating arts (Fig 1, near 26, 29). Moreover, the water means ensures that the articles to be separated do not stick to the hopper surface (col. 3, ln. 19-38). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Hoyt as taught above.

Allowable Subject Matter

Claims 12, 13 and 21-23 are allowed.

Claims 8-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Priority

Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed was filed 1/16/2001 and the instant application has a filing date of 1/17/2002, therefore as the provisional application was filed more than one year prior to the instant application priority cannot be granted.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-308-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-872-9326** (After-Final **703-972-9327**).

The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571** or **703-308-6552**.

The examiner's **UNOFFICIAL Personal fax number** is **703-746-3678**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only.

For more information about the PAIR system, see


<http://pair-direct.uspto.gov>

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at 866-217-9197 (Toll Free).

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Alternatively, inquiries of a general nature or relating to the status of this application or proceeding can also be directed to the **Receptionist** whose telephone number is **703-308-1113**.

August 31, 2004


DONALD P. WAIS:
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600